

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Nathaniel Gold,)	C/A No. 5:11-476-HMH-JRM
)	
)	
Plaintiff,)	REPORT AND RECOMMENDATION
vs.)	
)	
Chief, Capers Wannamaker, SMPD;)	
Lt. Andrew Hayes, St Matthew Police;)	
Judge Robert Hill Lake, St Matthew's Magistrate;)	
Richard Murphy, Ofc SMPD; Edgar Williams, Ofc SMPD,)	
)	
Defendants.)	
)	

Nathaniel Gold (“Plaintiff”), proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983.¹ Plaintiff is a pretrial detainee at the Orangeburg-Calhoun Regional Detention Center, and he files this action *in forma pauperis* under 28 U.S.C. § 1915. On April 29, 2011, Plaintiff filed a Motion to Amend/Correct Complaint, which this Court granted. In the Amended Complaint, Plaintiff added Defendant Judge Robert Hill Lake, along with several other defendants, and Plaintiff seeks money damages from him based on alleged violation of Plaintiff’s constitutional rights. Defendant Judge Robert Hill Lake should be summarily dismissed based on immunity.²

Review pursuant to the Prison Litigation Reform Act (PLRA)

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915; 28 U.S.C.

¹ Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the District Court.

² By Order filed April 19, 2011, this Court dismissed Defendants Judge Thomas Randolph, Jr., St. Matthews Police Dept., and St. Matthews Town Hall, without prejudice and without issuance and service of process.

§ 1915A; and the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321 (1996). This review has been conducted in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995) (*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983). The Complaint herein has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action “fails to state a claim on which relief may be granted,” “is frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” Title 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C. § 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court is charged with screening Plaintiff’s lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

This Court is required to liberally construe *pro se* documents, *Erickson v. Pardus*, 551 U.S. 89 (2007), holding them to a less stringent standard than those drafted by attorneys. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Hughes v. Rowe*, 449 U.S. 9 (1980) (*per curiam*). Even under this less stringent standard, however, a portion of the *pro se* Amended Complaint is subject to summary dismissal. The mandated liberal construction afforded to *pro se* pleadings means that if the Court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should

do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff's legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the Court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

Background

In the Amended Complaint, Plaintiff alleges that on March 17, 2011, Defendant Judge Robert Hill Lake re-served a false and illegal warrant (G-290140) for assault and battery third degree on Plaintiff in the St. Matthews magistrate's office.³ Plaintiff alleges that the same warrant was originally dated October 6, 2010, but it had not been properly served on Plaintiff. Plaintiff alleges that Defendant Lake had Plaintiff transported to the magistrate's office so that Plaintiff could be re-served with the same warrant. Plaintiff alleges that Defendant Lake attempted to issue a PR bond for Plaintiff, but that Plaintiff would not sign for it. Plaintiff alleges that he did not trust what Defendant Lake was doing. Plaintiff alleges that Defendant Lake failed to give Plaintiff a bond hearing or court date for warrant (G-290140), did not inform Plaintiff of his rights, nor give Plaintiff a copy of a "checklist." Plaintiff alleges that Defendant Lake was required to use the "checklist," but he did not. Plaintiff alleges that he is seeking legal action for the re-serving of a false warrant, false imprisonment, and harassment. Plaintiff requests \$50,000.00 from Defendant Lake.

³ Plaintiff alleges many other facts related to other defendants. Those facts are not set forth herein.

Discussion

Defendant Judge Robert Hill Lake is alleged to be a magistrate judge in St. Matthews, South Carolina. Judges have absolute immunity from a claim for damages arising out of their judicial actions unless they acted in the clear absence of all jurisdiction. *See Mireles v. Waco*, 502 U.S. 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 351-364 (1978); *Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir. 1987) (a suit against two Virginia magistrates); and *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985) ("It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions."). "Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity." *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005). "'This immunity applies even when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction.'" *Id.* (citation omitted). State and federal judges are also immune to requests for injunctive relief. *See Gilbert v. Ferry*, 298 F.Supp.2d 606, 612 (E.D. Mich. 2003), *aff'd* 401 F.3d 411 (6th Cir. 2005); *Bolin v. Story*, 225 F.3d 1234, 1242 (11th Cir. 2000). *See also* 42 U.S.C. § 1983 (limiting when injunctive relief may be granted against a judicial officer). Immunity presents a threshold question. *See Harlow v. Fitzgerald*, 475 U.S. 800, 818 (1982). Absolute immunity is "an immunity from suit rather than a mere defense to liability." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Liberally construed, Defendant Lake is alleged to have caused a false arrest warrant to be re-served on Plaintiff, attempted to issue a PR bond for Plaintiff, failed to have set a court date or bond hearing, and failed to have used a "checklist." The alleged misconduct by Defendant Lake

would have been part of his normal judicial functions as a magistrate judge. Thus, Defendant Lake's alleged illegal actions were not taken in the clear absence of all jurisdiction but rather were performed as part of his normal judicial duties. Thus, Defendant Lake should be summarily dismissed based on judicial immunity.

Recommendation

Accordingly, it is recommended that the District Court dismiss Defendant Judge Robert Hill Lake *without prejudice* and without issuance and service of process. *See Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal). **Plaintiff's attention is directed to the important notice on the next page.**



Joseph R. McCrorey
United States Magistrate Judge

May 5, 2011
Columbia, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).